IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 5340 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
NARANBHAI MAGANBHAI PATNI - Respondent(s)

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Appearance :
Shri I.M. Pandya, Assistant Government Pleader for Petitioner(s).
Shri L.N. Medipally for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/08/2007

ORAL JUDGMENT

The petitioner-State Government, being aggrieved by the award dated 22nd April, 1999 passed by the learned Labour Court,

Ahmedabad in Reference (LCA) No.1525 of 1991, is before this Court with a submission that the learned Court below could not make the award in favour of the workman.

2. After taking me through paragraph 10 of the award, the learned Counsel for the petitioner submitted that the learned Court below had placed wrong burden of proof on the petitioner, observing that it was the duty of the petitioner to produce complete service records and as the petitioner did not produce complete service records, an adverse inference would be drawn against the petitioner. His submission is that the Apex Court has repeatedly observed that the basic burden to prove a particular fact is upon the party who is alleging it and once he discharges the burden, then, the onus would shift upon the other side to disprove the same.

3. Shri Medipally, learned Counsel for the respondent-workman, however, submitted that as the petitioner was to maintain the records and it, being in possession of the records, has not produced the same, the learned Court below was justified in drawing the adverse inference against the petitioner.

4. It is trite to say that when a party asserts a fact or makes an allegation, then, the burden to prove the assertion or allegation is upon

the said party. If the party fails in proving his assertion or allegation, then, the fact would remain not proved and the other party would not be called upon to do anything further. If the evidence brought forward by the person, who has made the assertion or allegation, is reliable and in absence of any contrary statement, the Court is entitled to rely upon the same, then, the fact would stand proved. However, the other party would still have a right to bring the evidence before the Court and show that the evidence of the applicant is not reliable and other view is possible; such other party would be entitled to disprove the allegation.

5. In the present matter, the basic burden to prove that the workman had worked for 240 or more days in twelve calendar months preceding the date of retrenchment was upon the workman. The learned Court below could require the other side, that is, employer, to disprove the fact only if the fact was proved.

6. I could also understand the case for drawing the adverse inference if the workman had made an application to summon the records which were possessed by the employer; despite service if the employer was not to produce the records, then, the Court could certainly draw an adverse inference against the employer.

7. As the approach of the learned Court below is patently

illegal and runs contrary to the basic principles of law and judgements of the Apex Court, the award cannot be allowed to stand. It deserves to and is, accordingly, quashed. However, instead of dismissing the reference, I would remand the matter back to the learned Labour Court with a direction to the parties to appear before the said Court on 28th September, 2007. It shall be the duty of the parties to file a copy of this order before the learned Labour Court, enabling it to know as to what it is required to do.

8. After appearance, if the workman makes an application for summoning the records from the custody of the employer, then, such application shall be allowed by the learned Labour Court and the learned Court would direct the employer to produce the original records. If the records are not produced or no reasonable reason for non-production of the records is brought before the Court, the Court would be entitled to draw necessary adverse inference against the employer. If the parties pray to lead further evidence, oral or documentary, then, such permission shall be accorded by the learned Labour Court.

9. The learned Labour Court is hereby directed to dispose of the reference finally within a period of ten months from the date of appearance of the parties. If required, the learned Labour Court shall proceed with the hearing on day to day basis, but, shall maintain the

time limit.

10. The petition is allowed to the extent indicated above. Rule is made absolute. No order as to costs.

[R.S.Garg, J.]

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